(25,171)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 405.

EDUARDO RICAUD, L. C. BARLOW, AND CHARLES HICKERSON

vs.

THE AMERICAN METAL COMPANY, LIMITED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 United States Circuit Court of Appeals, Fifth Circuit.

No. 2750.

EDUARDO RICAUD, L. C. BARLOW, and CHARLES HICKERSON, Appellants,

vs.

THE AMERICAN METAL COMPANY, LIMITED, et al., Appellees.

Appeal from the District Court of the United States for the Western District of Texas.

Before Pardee and Walker, Circuit Judges, and Speer, District Judge.

Statement of the Case.

This is an action in equity brought by the American Metal Company, Limited, a corporation organized under the laws of the State of New York, to recover possession of certain bars of lead bullion.

Complainant below alleged that it was the owner of said bullion in September, 1913, and on the 13th of said month same was forcibly taken from its possession by persons to it unknown, without its consent; that said bullion was entered at the port of El Paso, Texas, March 25th, 1914, consigned to defendant L. C. Barlow and placed in the bonded warehouse in the care and custody of the Collector of Customs.

It applied for, and obtained a temporary injunction,
2 restraining the Collector of Customs from delivering the bullion to the other defendants, and all defendants were restrained from removing said bullion from the said bonded warehouse during the pendency of this suit.

Complainant alleged that said bullion originally consisted of 1500 bars, known as Lots Nos. 264, 265 and 266, and when entry was made it was 1279 bars, aggregating 167,801 pounds; and the reasonable market value at the time of filing suit (April 15th, 1914) was $17,887.44.

Complainant asked for recovery of said bullion, or in the alternative, its reasonable market value at the time of filing suit taken together with six per cent interest from April 15th, 1914, and for costs. It also asked for $741.35 damages, the claim for which was withdrawn on the trial in the court below.

The defendant Zach Cobb, Collector of Customs, answered that L. C. Barlow had made warehouse entries for 1279 bars of lead bullion, weighing 156,726 pounds and same was in his custody in the bonded warehouse, and that complainant's name did not appear in the records of his office in connection with said bullion.

Defendants L. C. Barlow and Eduardo Ricaud denied that complainant was the owner of said bullion or entitled to its possession, or that it was taken from it as alleged.

They further pleaded that L. C. Barlow is the owner of said bullion and that he purchased same from the defendant Ricaud who was the owner; that same was purchased by Ricaud from General Orestes Pereyra, Chief of the First Brigade of Durango, Constitutionalist Army of Mexico.

That in September, 1913, and for many months prior thereto a state of war existed in Mexico and a revolution was in
3 progress headed by Venustiano Carranza, who was named as Provisional President by the Constitutionalist forces then in revolution against the government headed by Victoriano Huerta; that the said Constitutionalist forces were in control of a large portion of the Republic of Mexico, including the cities of Mapimi, Bermejillo and Parral and that said General Pereyra was the military commander in control and in undisputed possession of said district in his official capacity as General in said army; that he was a duly commissioned General acting under a commission from said Carranza, First Chief and Provisional President of the Republic of Mexico;

That in September, 1913, the said Pereyra acting in his said capacity and under his commission as general aforesaid demanded and received from the Penoles Mining Company at Bermejillo 1500 bars of lead bullion;

That same was taken and received solely as a war measure for the purpose of providing his troops with clothing, munitions of war and food from the proceeds thereof, of which they were greatly in need;

That at the request of the representative of the said Penoles Company and to protect it in the value of said metal he gave a receipt for same showing that it consisted of 1500 bars of the value of 27,000 pesos, the same to be paid for on the triumph of the revolution or the establishment of a legal government;

That the said Pereyra caused the said bullion to be sold to defendant Ricaud and the money received for same was in fact used to purchase arms, ammunition, food and clothing for said Constitutionalist army; that the taking and receiving of the said bullion was a war measure caused and carried out because of the
4 necessities of war;

That at the time of taking it was the property of the Penoles Mining Company, claimed by them, was in their possession and receipt was given to the agent of said company.

That the taking and receipt of said bullion was made by the military officers of the *de facto* government, which since said date supplanted the government of Victoriano Huerta and is now the only government of the Republic of Mexico, and that said officers were duly commissioned and empowered to make levy of such material and munitions as they might require for war purposes, and that they made this levy in the legitimate exercise of their belligerent powers and duties.

Defendants also plead that the Penoles Mining Company was a Mexican corporation; that it did not deliver possession of said bullion to complainant, but that it was in the possession of said

Penoles Company at the time the same was received and claimed by said company as its property.

Defendants also plead that the allegations of complainant's bill are based upon disturbances of a political nature in a foreign government and that no act of the military commanders of the *de facto* government of Mexico *are* here subject to review;

That by reason of the above facts the Court had no jurisdiction in this cause and that if complainant had any ground of complaint it should be adjudicated either through the courts of Mexico or by international action between the two governments of the United States and Mexico, according to the principles of international law.

Defendants, therefore, ask that the bill be dismissed, that the Collector of Customs deliver the bullion to said Barlow and
5 for costs, etc.

The cause was tried by the Court and judgment rendered for complainants to which judgment defendants excepted in open Court and prayed an appeal to this Court, which was allowed.

On the hearing in the trial court there was evidence tending to establish the facts as claimed by each party.

Among the questions presented to this Court by the assignments of error are the following, to-wit:

I. Assuming that the bullion in suit was seized, condemned, and sold for war supplies by the Constitutionalist forces in revolution in Mexico, acting under authority from General Carranza, claiming to be the Provisional President of the Republic of Mexico, had the District Court of the Western District of Texas, into which the said bullion had been imported from Mexico, jurisdiction to try and adjudge as to the validity of the title acquired by and through the said seizure, appropriation, and sale by the Carranza forces as against an American citizen claiming ownership of the said bullion prior to its seizure?

II. If yes, does the subsequent recognition by the United States Government of Carranza as the legitimate President of the Republic of Mexico and his government as the only legitimate government of the Republic of Mexico deprive this Court of jurisdiction on this appeal to decide and adjudge the case on its merits?

III. If question 2 is answered in the negative, did the seizure, condemnation, and sale of the bullion in the manner and for the purposes stated to be assumed in question I have the effect of divesting the title to or ownership of it of a certain citizen of the United State of America not in or a resident of Mexico when such
6 seizure and condemnation occurred?

And the Judges desiring the instructions of the Honorable the Supreme Court for the proper decision of said questions do hereby certify the same to the Supreme Court.

For information as to the facts and questions in the case copies of transcript and briefs are herewith transmitted.

Witness our hands this 15th day of February, 1916.

(Signed) DON A. PARDEE,
Circuit Judge.
R. W. WALKER,
Circuit Judge.

Speer, District Judge, concurs.

7 UNITED STATES OF AMERICA,
Fifth Judicial Circuit, ss:

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Eduardo Ricaud, L. C. Barlow and Charles Hickerson, Appellants, versus The American Metal Company, Limited, et al., appellees, was duly filed February 15th, 1916, and entered of record in my office by order of said court, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the City of New Orleans, Louisiana, this 16th day of February, A. D. 1916.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] No. 2750. United States Circuit Court of Appeals for the Fifth Circuit. Eduardo Ricaud, L. C. Barlow and Charles Hickerson, Appellants, vs. The American Metal Company, Limited, et al., Appellees. Certificate.

Endorsed on cover: File No. 25,171. U. S. Circuit Court Appeals, 5th Circuit. Term No. 405. Eduardo Ricaud, L. C. Barlow, and Charles Hickerson vs. The American Metal Company, Limited. (Certificate.) Filed March 10th, 1916. File No. 25,171.

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IN THE

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OCTOBER TERM, 1917.

No. 119.

EDUARDO RICAUD, L. C. BARLOW AND CHARLES HICKERSON, *Plaintiffs in Error.*

vs.

THE AMERICAN METAL COMPANY, LIMITED.

BRIEF OF APPELLANTS.

F. E. HUNTER,
R. B. REDIC,
Solicitors for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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THE AMERICAN METAL COMPANY, LIMITED.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

The statement of the case by the United States Circuit ourt of Appeals is here adopted.

This case being before the Court on Certified Questions opounded by the United States Circuit Court of Appeals, uch of the brief filed in that Court may be eliminated here, e questions of fact being stated.

The questions propounded cover the entire contention of appellants, and we submit the following propositions as decisive of this action:

1. The complainants' bill being based upon an act of the military commanders of the *de facto* government of that portion of Mexico where said bullion was, at the time it was seized, such government was foreign to the government of the United States, and is based upon disturbances of a political nature in such foreign government, over which the courts of the United States have no jurisdiction.

2. Parties belligerent in a public war are independent nations in effect.

3. Private property may be seized when needed in the course of military operations.

4. The acts of military commanders are covered by military law and military necessity, and such acts are not properly a subject of adjudication in the courts of another government.

5. The admission of the existence of insurrection or war by the political department of a government is a public act of which the courts must take notice.

6. It is a settled doctrine of our courts that for an act done in accordance with the usages of civilized warfare, no civil liability attaches to the officers or soldiers who acted under military authority.

7. Injuries suffered by a citizen of the United States in any foreign country at the hands of its *de facto* officers should be adjudicated by the two governments by international action according to the principles of international law, and are not properly a subject of adjudication by the courts of this country.

The Court will take judicial knowledge that Mexico is a foreign government, and that the political department of this government has recognized a state of war in Mexico.

The various acts of the United States government in regard to the revolution headed by Francisco Madero, the later acts of this government regarding the murder of Madero and the ascendency to power of Victoriano Huerta, the sending of the forces of the United States, both naval and military, to Vera Cruz, its occupation of that city, and the late proclamation of President Wilson to the leaders of the opposing factions, supplemented by the position taken by the United States published August 7th, 1915, is undisputed evidence that the political department of this government has recognized the existence of revolution and war in Mexico. And later, in October, 1915, recognized the Constitutionalist party as the *de facto* government of Mexico and Carranza as its Chief Executive, and still later has accredited him full diplomatic recognition as such President.

40 Cyc. 315.
The Three Friends, 166 U. S. 1.
The Itata 56 Fed. 505.
Jones vs. United States, 137 U. S. 202.
O'Neill vs. Central Leather Co., 94 Atlantic Rep. 789.

We contend that the court below had no jurisdiction in this case and should have dismissed the bill when it was shown by the undisputed evidence that the seizing of the bullion in controversy was made by the military commanders of the *de facto* government in Mexico by reason of the revolution then in progress.

Underhill vs. Hernandez, 65 Fed. Rep. 577 (38 L. R. A. 405, 407).
L'Invincible, 14 U. S. 238 (4 L. Ed. 80).
American Banana Co. vs. United Trust Co., 166 Fed. Rep. 261.

Schooner Exchange vs. McFadden *et al.*, 11 U. S. 112 (3 L. Ed. 287).
Ford vs. Surget, 97 U. S. 594.
Dow vs. Johnson, 100 U. S. 158 (25 L. Ed. 632).
Lamar vs. Browne, 92 U. S. 202 (25 L. Ed. 652).
O'Neill vs. Central Leather Co., 94 Atlantic Rep. 789.

By the law of nations, parties belligerent in a public war, are to all intents and purposes independent nations, and, as shown above, a revolution was in progress, the revolutionary forces were in charge of the particular place where this bullion was seized, and the seizure was made by revolutionary generals for military purposes in the conduct of the war; such acts are not here subject to review.

By the law of nations not only is public property of the enemy subject to seizure but, depending on the necessities of the case, private property as well may be seized either for the purposes of offense or defence, for the prevention of its falling into the hands of the enemy or for use in relieving the necessities of the particular force making the seizure, supplying it with arms, ammunition, food, clothing and general munitions of war. History is full of instances where military commanders have seized private property for military purposes and their acts have been upheld by the courts, not only of the United States but of all other civilized nations; but from the very nature of the seizure, the place where it was made, the conditions existing at the time and place are such as to show conclusively that such acts were without the jurisdiction of the courts of this country.

This Supreme Court has repeatedly held that the acts of military commanders are governed by military law and military necessity and such acts are not properly the subject of adjudication in the courts of another government.

If, therefore, the seizure was made by the military authorities and their act is not subject to adjudication here, then if the property was seized by them for military necessity and should later be brought within the jurisdiction of our courts, the question of ownership of such property, depending upon the acts of the military commanders, could not be the subject of a bill in equity as it thereby would require the Court to pass upon the acts of such military officer in discharge of his duty in a foreign government.

In the case of Ford vs. Surget, 97 U. S. 594 (24 Law Ed. 1018), where cotton was seized and destroyed, in the case of Lamar vs. Browne, 92 U. S. 202 (23 Law Ed. 652), where cotton was seized and disposed of, it was held that the military authorities had such power and if they had the power under the rules of civilized warfare then any disposition they made of the goods could not be the subject of adjudication in our courts.

The fact that the political department of the United States government has recognized the existence of war in Mexico on many occasions, and it being the settled doctrine of our courts that no civil liability attaches to the officers and soldiers when acting under military authority, places the bullion at issue in this case, in the position, that to hold that appellee (complainant below) could recover it, would be to hold that there was a personal liability on the part of General Pereyra, the officer who seized it, that he had no authority to make the seizure, and consequently no authority to dispose of it when seized, and to put it on the particular ground of legal decision, would be to hold that the courts of this country have a right to adjudicate such questions arising in a foreign jurisdiction.

If, instead of General Pereyra's authorizing the sale to Mr. Ricaud, one of the appellants, he had brought the bullion to this country himself, acting, as the undisputed evi-

dence shows he did act, solely in his military capacity, to procure munitions of war for his troops, it strikes us that he would have been acting clearly within his rights as a military commander, and such bullion, arriving in the jurisdiction of this Court under such circumstances, would not be subject to attachment or sequestration by complainants. If, therefore, the acts of the general could not be adjudicated here if he were a party defendant, we contend that the sale by him, after such seizure, places the person to whom he sold in the same position, because the possession of the bullion in either is the result of military seizure, and to hold that he could not sell would, in effect, be holding that he had no right to seize.

We would especially call the Court's attention to the decision in the case of Underhill vs. Hernandez from the United States Court of Appeals in the Second Circuit (reported in 65 Fed. Reporter 577) and the approval of same by the Supreme Court (168 U. S. 250) as a case directly in point. We beg to quote the words of Justice Wallace, the Circuit Judge, delivering the opinion of the Court:

> "Considerations of comity and of the highest expediency require that the conduct of states, whether in transactions with other states or with individuals, their own citizens or foreign citizens, should not be called in question by the legal tribunals of another jurisdiction. The citizens of a state have no adequate redress for any grievance at its hands by an appeal to the courts or the other departments of their own governments. It would not be only offensive and unnecessary but it would imperil the amicable relations between governments and vex the peace of nations to permit the sovereign acts or political transactions of states to be subjected to the examination of the legal tribunals of other states."

And the Supreme Court, acting through Chief Justice Fuller in affirming the decree of the Circuit Court, says:

> "We think the Circuit Court of Appeals was justified in concluding 'that the acts of the defendant were the acts of the government of Venezuela and as such are not properly the subject of adjudication in the court of another government.'"

We earnestly contend that the answer of this Court to question numbered I, should be that the District Court had no jurisdiction to try and adjudge as to the validity of the title acquired by and through the seizure, appropriation and sale by the Carranza forces.

If question numbered I is answered in the negative, we contend that this also disposes of questions II and III, for if the District Court had no jurisdiction to try and adjudge the title, then the Circuit Court of Appeals could not adjudge the case on the merits of the title, and effectually divested the title to or ownership of the bullion, even of an American citizen, as shown by the above authorities.

Respectfully submitted,

F. E. HUNTER,

R. B. REDIC,

Solicitors for Appellants.